

House Study Bill 267

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
ENVIRONMENTAL PROTECTION BILL
BY CHAIRPERSON OLSON)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for environmental protection of facilities and
2 practices related to the production of livestock, including
3 animal feeding operations, providing for fees and tax
4 exemptions, making penalties applicable, and providing
5 effective and applicability dates.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7 TLSB 2838YC 82
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1 1 DIVISION I
1 2 REGULATION OF ANIMAL FEEDING OPERATIONS
1 3 Section 1. Section 331.304A, Code 2007, is amended to read
1 4 as follows:
1 5 331.304A LIMITATIONS ON COUNTY LEGISLATION.
1 6 1. As used in this section:
1 7 a. "Aerobic structure", "animal", "animal feeding
1 8 operation", "animal feeding operation structure", "confinement
1 9 feeding operation structure", and "manure" mean the same as
1 10 defined in section 459.102.
1 11 b. "County legislation" means any ordinance, motion,
1 12 resolution, or amendment adopted by a county pursuant to
1 13 section 331.302.
1 14 2. a. Except as provided in subsection 3, a county
1 15 shall not adopt or enforce county legislation regulating a
1 16 condition or activity occurring on land used for the
1 17 production, care, feeding, or housing of animals unless the
1 18 regulation of the production, care, feeding, or housing of
1 19 animals is expressly authorized by state law. County
1 20 legislation adopted in violation of this section is void and
1 21 unenforceable and any enforcement activity conducted in
1 22 violation of this section is void.
1 23 b. A condition or activity occurring on land used for the
1 24 production, care, feeding, or housing of animals includes but
1 25 is not limited to the construction, operation, or management
1 26 of an animal feeding operation, an animal feeding operation
1 27 structure, or aerobic structure, and to the storage, handling,
1 28 or application of manure or egg washwater.
1 29 3. A county shall participate in reviewing an application
1 30 to construct a confinement feeding operation structure to be
1 31 located in the county as provided in section 459.304.
1 32 Sec. 2. Section 455B.134, subsection 3, paragraph f,
1 33 subparagraph (1), unnumbered paragraphs 1 and 2, Code 2007,
1 34 are amended by striking the unnumbered paragraphs.
1 35 Sec. 3. Section 459.102, Code 2007, is amended by adding
2 1 the following new subsections:
2 2 NEW SUBSECTION. 8A. "Benefited object or location" means
2 3 any of the following:
2 4 a. A residence.
2 5 b. A commercial enterprise.
2 6 c. A bona fide religious institution.
2 7 d. An educational institution.
2 8 e. A public use area.
2 9 f. A qualified city.
2 10 g. A public thoroughfare.
2 11 h. A swine gestating-to=farrowing operation structure.
2 12 i. A planned residential housing development.
2 13 j. A tourism destination.
2 14 NEW SUBSECTION. 9A. "City" means the same as defined in
2 15 section 362.2.

2 16 NEW SUBSECTION. 20A. "Designated groundwater access
2 17 point" means a known sinkhole, or a cistern, abandoned well,
2 18 unplugged agricultural drainage well, agricultural drainage
2 19 well surface inlet, or drinking water well. However, a
2 20 designated groundwater access point does not include a terrace
2 21 tile inlet.

2 22 NEW SUBSECTION. 37A. "Planned residential housing
2 23 development" means a lot in which residences are planned to be
2 24 constructed according to a scaled drawing on a subdivision
2 25 plat that conforms with the applicable requirements of chapter
2 26 355, as prepared by a registered land surveyor and recorded
2 27 with a county recorder as provided in section 355.10.

2 28 NEW SUBSECTION. 40A. "Qualified city" means a city which
2 29 has adopted a plan, including but not limited to a
2 30 comprehensive plan, that provides for managed growth of the
2 31 city.

2 32 NEW SUBSECTION. 45A. "Swine confinement feeding
2 33 operation" means a confinement feeding operation in which only
2 34 swine are confined in a building which is part of the
2 35 confinement feeding operation.

3 1 NEW SUBSECTION. 46A. "Swine gestating-to=farrowing
3 2 operation" means an animal feeding operation maintaining at
3 3 least fifty sows and which is devoted to that portion of the
3 4 phases of the swine production cycle that may include breeding
3 5 but must include gestation and farrowing.

3 6 NEW SUBSECTION. 46B. "Swine gestating-to=farrowing
3 7 operation structure" means a structure which houses sows and
3 8 their litters of immature swine weighing fifteen pounds or
3 9 less, if the structure is associated with a swine
3 10 gestating-to=farrowing operation.

3 11 NEW SUBSECTION. 46C. "Tourism destination" means a
3 12 portion of real estate having unique archaeological, cultural,
3 13 historical, recreational, scenic, or scientific significance,
3 14 and that tends to attract the visiting public.

3 15 Sec. 4. Section 459.102, subsection 21, Code 2007, is
3 16 amended to read as follows:

3 17 21. "Designated wetland" means land designated as a
3 18 protected wetland by the ~~United States department of the~~
~~interior or the department of natural resources~~, including but
3 19 not limited to a protected wetland as defined in section
3 20 456B.1, if the land is owned and managed by the department,
3 21 ~~the federal government, or the department of natural resources~~
3 22 a county or city. However, a designated wetland does not
3 23 include land where an agricultural drainage well has been
3 24 plugged causing a temporary wetland or land within a drainage
3 25 district or levee district.

3 27 Sec. 5. Section 459.102, subsection 41, paragraphs a and
3 28 b, Code 2007, are amended to read as follows:

3 29 a. For a confinement feeding operation maintaining animals
3 30 other than swine as part of a ~~farrowing and gestating swine~~
3 31 ~~gestating-to=farrowing~~ operation or ~~swine farrow-to=finish~~

3 32 operation or cattle as part of a cattle operation, five
3 33 thousand three hundred thirty-three or more animal units.

3 34 b. For a confinement feeding operation maintaining swine
3 35 as part of a ~~farrowing and gestating swine~~

4 1 ~~gestating-to=farrowing~~ operation, two thousand five hundred or
4 2 more animal units.

4 3 Sec. 6. Section 459.201, subsection 1, paragraph b,
4 4 subparagraphs (1), (2), and (3), Code 2007, are amended to
4 5 read as follows:

4 6 (1) (a) One thousand two hundred fifty feet for a
4 7 confinement feeding operation having an animal unit capacity
4 8 of less than three thousand animal units for animals other
4 9 than swine maintained as part of a ~~swine farrowing and~~
4 10 ~~gestating gestating-to=farrowing~~ operation or ~~swine~~
4 11 ~~farrow-to=finish~~ operation, or cattle maintained as part of a
4 12 cattle operation.

4 13 (b) One thousand two hundred fifty feet for a confinement
4 14 feeding operation having an animal unit capacity of less than
4 15 one thousand two hundred fifty animal units for swine
4 16 maintained as part of a ~~farrowing and gestating swine~~
4 17 ~~gestating-to=farrowing~~ operation, less than two thousand seven
4 18 hundred animal units for swine maintained as part of a ~~swine~~
4 19 ~~farrow-to=finish~~ operation, or less than four thousand animal
4 20 units for cattle maintained as part of a cattle operation.

4 21 (2) (a) One thousand five hundred feet for a confinement
4 22 feeding operation having an animal unit capacity of three
4 23 thousand or more but less than five thousand animal units for
4 24 animals other than swine maintained as part of a ~~swine~~
4 25 ~~farrowing and gestating gestating-to=farrowing~~ operation or
4 26 ~~swine farrow-to=finish~~ operation, or cattle maintained as part

4 27 of a cattle operation.
 4 28 (b) One thousand five hundred feet for a confinement
 4 29 feeding operation having an animal unit capacity of one
 4 30 thousand two hundred fifty or more but less than two thousand
 4 31 animal units for swine maintained as part of a swine ~~farrowing~~
~~4 32 and gestating~~ ~~gestating=to=farrowing~~ operation, two thousand
 4 33 seven hundred or more but less than five thousand four hundred
 4 34 animal units for swine maintained as part of a swine
 4 35 ~~farrow=to=finish~~ operation, or four thousand or more but less
 5 1 than six thousand five hundred animal units for cattle
 5 2 maintained as part of a cattle operation.

5 3 (3) (a) Two thousand five hundred feet for a confinement
 5 4 feeding operation having an animal unit capacity of five
 5 5 thousand or more animal units for animals other than swine
 5 6 maintained as part of a swine ~~farrowing and gestating~~
 5 7 ~~gestating=to=farrowing~~ operation or swine ~~farrow=to=finish~~
 5 8 operation, or cattle maintained as part of a cattle operation.

5 9 (b) Two thousand five hundred feet for a confinement
 5 10 feeding operation having an animal unit capacity of two
 5 11 thousand or more animal units for swine maintained as part of
 5 12 a swine ~~farrowing and gestating~~ ~~gestating=to=farrowing~~
 5 13 operation, five thousand four hundred animal units or more for
 5 14 swine maintained as part of a swine ~~farrow=to=finish~~
 5 15 operation, or six thousand five hundred or more animal units
 5 16 for cattle maintained as part of a cattle operation.

5 17 Sec. 7. Section 459.201, Code 2007, is amended by adding
 5 18 the following new subsection:

5 19 NEW SUBSECTION. 4A. The department shall adopt rules
 5 20 designating tourism destinations, including the boundaries of
 5 21 tourism destinations. The department shall adopt the rules in
 5 22 cooperation with the department of economic development and
 5 23 the department of cultural affairs.

5 24 Sec. 8. Section 459.201, subsection 5, Code 2007, is
 5 25 amended to read as follows:

5 26 5. All distances between ~~locations of objects a benefited~~
 5 27 ~~object or location and a confinement feeding operation~~

5 28 ~~structure or the application of manure as provided in this~~
 5 29 ~~part subchapter~~ shall be measured in feet from their closest
 5 30 points, as provided by rules adopted by the department.

5 31 a. ~~However, a~~ A distance between a confinement feeding
 5 32 ~~operation structure and a public thoroughfare and a~~
~~5 33 confinement feeding operation structure~~ shall be measured from
 5 34 the portion of the right-of-way which is closest to the
 5 35 confinement feeding operation structure.

6 1 b. A distance between a confinement feeding operation
 6 2 ~~structure and a qualified city~~ shall be measured from its city
 6 3 ~~limits.~~

6 4 Sec. 9. Section 459.202, Code 2007, is amended by striking
 6 5 the section and inserting in lieu thereof the following:

6 6 459.202 CONFINEMENT FEEDING OPERATIONS STRUCTURES ==
 6 7 STANDARD MINIMUM SEPARATION DISTANCES.

6 8 This section applies to confinement feeding operation
 6 9 structures which are constructed on or after the effective
 6 10 date of this section of this Act, to the expansion of those
 6 11 confinement feeding operation structures which are constructed
 6 12 on or after the effective date of this section of this Act,
 6 13 and to the expansion of those confinement feeding operation
 6 14 structures on and after the effective date of this section of
 6 15 this Act when those confinement feeding operation structures
 6 16 were constructed prior to the effective date of this section
 6 17 of this Act.

6 18 1. Except as provided in this section, section 459.202A,
 6 19 and section 459.205, the following table represents the
 6 20 standard minimum separation distance measured in feet required
 6 21 between a confinement feeding operation structure and a
 6 22 benefited object or location:

	For a confinement feeding operation having an animal unit capacity of 500 or more less than 500 animal units	For a confinement feeding operation having an animal unit capacity of 500 or more but less than 3,000 animal units	For a confinement feeding operation having an animal unit capacity of 3,000 or more animal units
6 23			
6 24			
6 25			
6 26			
6 27			
6 28			
6 29			
6 30			
6 31			
6 32			
6 33			
6 34			
6 35			
7 1	1,320	2,640	5,280
7 2			

7 1 structure
 7 2 2. a. A confinement feeding operation structure shall not

7 3 be constructed or expanded within the following distances from
7 4 a tourism destination:
7 5 (1) For a tourism destination which is not a high-quality
7 6 water resource, 5,280 feet.
7 7 (2) For a tourism destination which is a high-quality
7 8 water resource, 10,560 feet. However, this subparagraph shall
7 9 not apply to a high-quality water resource which is a water
7 10 course principally used for trout fishing as determined by the
7 11 department.

7 12 b. A confinement feeding operation structure shall not be
7 13 constructed or expanded within the following distances from a
7 14 "public thoroughfare", 100 feet.

7 15 Sec. 10. NEW SECTION. 459.202A SWINE CONFINEMENT FEEDING
7 16 OPERATION STRUCTURES == ALTERNATIVE MINIMUM SEPARATION
7 17 DISTANCE REQUIREMENTS.

7 18 This section provides for alternative minimum separation
7 19 distance requirements which apply to the construction or
7 20 expansion of a confinement feeding operation structure which
7 21 is part of a swine confinement feeding operation.

7 22 1. Except as provided in section 459.205, the alternative
7 23 minimum separation distance requirements shall apply in lieu
7 24 of the standard minimum separation distance requirements as
7 25 otherwise provided in section 459.202, if the construction or
7 26 expansion of the confinement feeding operation structure is in
7 27 compliance with a community-based odor assessment plan as
7 28 developed by the department within Iowa state university
7 29 responsible for agricultural and biosystems engineering.
7 30 However, this section does not require that a person construct
7 31 a confinement feeding operation structure in compliance with a
7 32 community-based odor assessment plan if the person elects to
7 33 comply with the standard minimum separation distance
7 34 requirements otherwise provided in section 459.202.

7 35 2. A person proposing to construct or expand a confinement
8 1 feeding operation structure may apply to the university in
8 2 order to develop the community-based odor assessment plan.
8 3 Iowa state university may assess a fee to develop the plan.
8 4 The amount of the fee shall not be more than five hundred
8 5 dollars. Iowa state university's collection of the fees shall
8 6 be treated as repayment receipts as defined in section 8.2.

8 7 3. The community-based odor assessment plan shall utilize
8 8 computer modeling that analyzes the statistical probability of
8 9 dispersions of odor emitted from the construction or expansion
8 10 of the proposed confinement feeding operation structure and
8 11 the measurement of detectable odor for a fixed duration at
8 12 each benefited object or location which would be within the
8 13 standard minimum separation distance requirement as provided
8 14 in section 459.202, if the confinement feeding operation
8 15 structure was constructed or expanded.

8 16 4. The community-based odor assessment plan may include
8 17 any of the following:

8 18 a. A best site for constructing or expanding confinement
8 19 feeding operation structure, which may include a type of
8 20 manure storage structure or the orientation of a confinement
8 21 feeding operation structure.

8 22 b. Best management practices for operating the confinement
8 23 feeding operation, which may include the installation, use,
8 24 and scheduled maintenance and replacement of items,
8 25 mechanisms, and infrastructure to reduce the emission of odor
8 26 emitted from the confinement feeding operation.

8 27 5. Iowa state university shall determine whether the
8 28 construction or expansion of the confinement feeding operation
8 29 structure complies with the community-based odor assessment
8 30 plan. If the construction or expansion complies with the
8 31 community-based odor assessment plan, the department shall
8 32 provide the person proposing to construct or expand the
8 33 confinement feeding operation structure with a copy of the
8 34 plan and a statement certifying that its construction or
8 35 expansion complies with the plan.

9 1 Sec. 11. Section 459.204, Code 2007, is amended to read as
9 2 follows:

9 3 459.204 ~~LIQUID~~ MANURE APPLICATION == SEPARATION DISTANCE.

9 4 Except as provided in section 459.205, ~~a~~ this section
9 5 applies to the application of manure from an animal feeding
9 6 operation.

9 7 1. A person shall not apply liquid manure from a
9 8 confinement feeding operation on land located within seven
9 9 hundred fifty feet from a residence not owned by the
9 10 titleholder of the land, a commercial enterprise, a bona fide
9 11 religious institution, an educational institution, or a public
9 12 use area within the following minimum separation distances
9 13 from a benefited object or location:

9 14 a. For dry manure, four hundred feet.
9 15 b. For liquid manure, seven hundred fifty feet.
9 16 2. Liquid manure shall be injected into the soil or
9 17 incorporated within the soil during the same day.
9 18 Sec. 12. Section 459.205, Code 2007, is amended to read as
9 19 follows:
9 20 459.205 ~~SEPARATION DISTANCE REQUIREMENTS~~ == EXEMPTIONS.
9 21 1. ~~For the construction or expansion of a confinement~~
9 22 ~~feeding operation structure, a standard minimum separation~~
9 23 ~~distance requirement provided in this subchapter section~~
9 24 ~~459.202 or an alternative minimum separation distance~~
9 25 ~~requirement provided in section 459.202A shall not apply to~~
9 26 ~~any of the following:~~
9 27 1. ~~A confinement feeding operation structure, if the~~
9 28 ~~structure is part of a confinement feeding operation which~~
9 29 ~~qualifies as a small animal feeding operation. However, this~~
9 30 ~~subsection shall not apply if the confinement feeding~~
9 31 ~~operation structure is an unformed manure storage structure.~~
9 32 a. ~~A confinement feeding operation structure which was~~
9 33 ~~constructed or expanded on a date which complied with the~~
9 34 ~~minimum separation distance requirement as provided in state~~
9 35 ~~law, including chapter 455B or this chapter. However, any~~
10 1 ~~construction or expansion of a confinement feeding operation~~
10 2 ~~structure after the effective date of this section of this Act~~
10 3 ~~shall comply with the requirements of this subchapter.~~
10 4 2. ~~a. b. A confinement feeding operation structure which~~
10 5 ~~is constructed or expanded, if the titleholder of the land~~
10 6 ~~benefiting from the distance separation requirement where the~~
10 7 ~~benefited object or location is situated executes a written~~
10 8 ~~waiver with the titleholder of the land where the structure is~~
10 9 ~~located situated. However, all of the following shall apply:~~
10 10 (1) (a) ~~If a confinement feeding operation structure is~~
10 11 ~~constructed or expanded within the separation distance~~
10 12 ~~required between a confinement feeding operation structure and~~
10 13 ~~a public thoroughfare as required pursuant to section 459.202,~~
10 14 ~~the state or a political subdivision constructing or~~
10 15 ~~maintaining the public thoroughfare benefiting from the~~
10 16 ~~distance separation requirement may execute a written waiver~~
10 17 ~~with the titleholder of the land where the confinement feeding~~
10 18 ~~operation structure is located.~~
10 19 (b) ~~If the confinement feeding operation structure is~~
10 20 ~~constructed or expanded within the separation distance~~
10 21 ~~required between a confinement feeding operation structure and~~
10 22 ~~a city, the city may execute a written waiver in a manner~~
10 23 ~~provided for by the city.~~
10 24 (c) ~~If a confinement feeding operation structure is~~
10 25 ~~constructed or expanded within the separation distance~~
10 26 ~~required between a confinement feeding operation structure and~~
10 27 ~~a lot of a planned residential housing development, the person~~
10 28 ~~who is the titleholder of the lot and who resides on the lot~~
10 29 ~~may execute a written waiver with the titleholder of the land~~
10 30 ~~where the confinement feeding operation structure is located.~~
10 31 (2) ~~The confinement feeding operation structure shall be~~
10 32 ~~constructed or expanded under such terms and conditions that~~
10 33 ~~the parties negotiate.~~
10 34 b- (3) ~~A written waiver under this subsection becomes~~
10 35 ~~effective only upon the recording of the waiver in the office~~
11 1 ~~of the recorder of deeds of the county in which the benefited~~
11 2 ~~land is located. The filed waiver shall preclude enforcement~~
11 3 ~~by the state of section 459.202 or 459.202A as it relates to a~~
11 4 ~~distance requirement between the confinement feeding operation~~
11 5 ~~structure and the benefited object or location or object~~
11 6 ~~benefiting from the separation distance requirement.~~
11 7 3- c. ~~A confinement feeding operation structure which is~~
11 8 ~~constructed or expanded within any distance from a residence,~~
11 9 ~~educational institution, commercial enterprise, bona fide~~
11 10 ~~religious institution, city, or public use area benefited~~
11 11 ~~object or location, if any of the following applies:~~
11 12 (1) (a) ~~A residence, educational institution, commercial~~
11 13 ~~enterprise, or bona fide religious institution, public~~
11 14 ~~thoroughfare, or swine gestating-to-farrowing operation~~
11 15 ~~structure was constructed or expanded, or after the date that~~
11 16 ~~the confinement feeding operation was established.~~
11 17 (b) ~~The boundaries of the city, or public use area, or~~
11 18 ~~tourism destination were established or expanded, after the~~
11 19 ~~date that the confinement feeding operation was established.~~
11 20 (2) ~~The date the confinement feeding operation was~~
11 21 ~~established is the date on which the confinement feeding~~
11 22 ~~operation commenced operating. A change in ownership or~~
11 23 ~~expansion of the confinement feeding operation shall not~~
11 24 ~~change the established date of operation.~~

11 25 d. The confinement feeding operation includes a
11 26 confinement feeding operation structure that is expanded by
11 27 replacing one or more unformed manure storage structures with
11 28 one or more formed manure storage structures, if all of the
11 29 following apply:
11 30 (1) The animal weight capacity or animal unit capacity,
11 31 whichever is applicable, is not increased for that portion of
11 32 the confinement feeding operation that utilizes all
11 33 replacement formed manure storage structures.
11 34 (2) Use of each replaced unformed manure storage structure
11 35 is discontinued within one year after the construction of the
12 1 replacement formed manure storage structure.
12 2 (3) The capacity of all replacement formed manure storage
12 3 structures does not exceed the amount required to store manure
12 4 produced by that portion of the confinement feeding operation
12 5 utilizing the formed manure storage structures during any
12 6 fourteen-month period.
12 7 (4) No portion of the replacement formed manure storage
12 8 structure is closer to a benefited object or location for
12 9 which separation is required under section 459.202 than any
12 10 other confinement feeding operation structure which is part of
12 11 the operation.
12 12 4. 2. The For the application of liquid manure on land
12 13 within a separation distance required between the applied
12 14 manure and an object or location for which separation is
12 15 required under originating from a confinement feeding
12 16 operation, a requirement provided in section 459.204, shall
12 17 not apply if any of the following apply:
12 18 a. The liquid manure is injected into the soil or
12 19 incorporated within the soil not later than twenty-four hours
12 20 from the original application, as provided by rules adopted by
12 21 the commission.
12 22 b. The the titleholder of the land benefiting from the
12 23 separation distance requirement where the benefited object or
12 24 location is situated executes a written waiver with the
12 25 titleholder of the land where the manure is applied.
12 26 c. The liquid manure originates from a small animal
12 27 feeding operation.
12 28 d. The liquid manure is applied by spray irrigation
12 29 equipment using a center pivot mechanism as provided by rules
12 30 adopted by the department, if all of the following apply:
12 31 (1) The spray irrigation equipment uses hoses which
12 32 discharge the liquid manure in a downward direction at a
12 33 height of not more than nine feet above the soil.
12 34 (2) The spray irrigation equipment disperses manure
12 35 through an orifice at a maximum pressure of not more than
13 1 twenty-five pounds per square inch.
13 2 (3) The liquid manure is not applied within two hundred
13 3 fifty feet from a residence not owned by the titleholder of
13 4 the land, a commercial enterprise, a bona fide religious
13 5 institution, an educational institution, or a public use area.
13 6 5. The distance between a confinement feeding operation
13 7 structure and a cemetery, if any of the following applies:
13 8 a. The confinement feeding operation structure was
13 9 constructed or expanded prior to January 1, 1999.
13 10 b. The construction or expansion of the confinement
13 11 feeding operation structure began prior to January 1, 1999.
13 12 Sec. 13. Section 459.207, subsection 1, paragraph b, Code
13 13 2007, is amended to read as follows:
13 14 b. "Separated location" means a benefited object or
13 15 location or object from which a separation distance is
13 16 required under section 459.202 or 459.204, other than a public
13 17 thoroughfare.
13 18 Sec. 14. Section 459.303, subsection 1, paragraphs a and
13 19 b, Code 2007, are amended to read as follows:
13 20 a. Except as provided in paragraph "b", a person must
13 21 obtain be issued a permit to construct any of the following:
13 22 (1) A confinement feeding operation structure if after
13 23 construction its confinement feeding operation would have an
13 24 animal unit capacity of at least one thousand animal units.
13 25 (2) The confinement feeding operation structure is an
13 26 unformed manure storage structure.
13 27 b. A person is not required to obtain a permit to
13 28 construct a confinement feeding operation structure if any of
13 29 the following apply:
13 30 (1) The confinement feeding operation structure, if
13 31 constructed, would be part of a small animal feeding
13 32 operation. However, the person must obtain be issued a permit
13 33 under this section if any of the following apply:
13 34 (a) The confinement feeding operation structure is an
13 35 unformed manure storage structure.

14 1 (b) The confinement feeding operation structure may be
14 2 constructed within the standard minimum separation distance
14 3 requirement as provided in section 459.202, because it
14 4 complies with an alternative minimum separation distance
14 5 requirement as provided in section 459.202A.

14 6 (2) The confinement feeding operation structure is part of
14 7 a confinement feeding operation which is owned by a research
14 8 college conducting research activities as provided in section
14 9 459.318.

14 10 Sec. 15. Section 459.303, subsections 2 and 3, Code 2007,
14 11 are amended to read as follows:

14 12 2. The department shall issue a construction permit upon
14 13 ~~the department's~~ approval of an application. The department
14 14 shall approve the application if the application is submitted
14 15 to the county board of supervisors in the county where the
14 16 proposed confinement feeding operation structure is to be
14 17 located as required pursuant to section 459.304, and the
14 18 application meets the requirements of this chapter. ~~If a~~
14 19 ~~county submits an approved recommendation pursuant to a~~
14 20 ~~construction evaluation resolution filed with the department,~~
14 21 ~~the application must also achieve which may include a~~
14 22 satisfactory rating produced by the master matrix used by the
14 23 board or department under section 459.304. The department
14 24 shall approve ~~the~~ application ~~which meets the requirements of~~
14 25 ~~this chapter~~ regardless of whether the applicant is required
14 26 to be issued a construction permit.

14 27 3. The department shall not approve an application for a
14 28 construction permit unless the applicant submits all of the
14 29 following ~~to the department~~:

14 30 a. ~~A construction permit application and construction~~
14 31 ~~permit application fee as provided in section 459.400. An~~
14 32 ~~application to construct a confinement feeding operation~~
14 33 ~~structure in compliance with an alternative minimum separation~~
14 34 ~~distance requirement from a benefited object or location must~~
14 35 ~~include a community-based odor assessment plan and a statement~~
15 1 ~~certified by Iowa state university verifying that the~~
15 2 ~~construction complies with the community-based odor assessment~~
15 3 ~~plan as provided in section 459.202A.~~

15 4 b. ~~A manure management plan as provided in section 459.312~~
15 5 ~~and manure management plan filing fee as provided in section~~
15 6 ~~459.400.~~

15 7 ~~a-~~ c. An indemnity fee as provided in section 459.502
15 8 that the department shall deposit into the manure storage
15 9 indemnity fund created in section 459.501.

15 10 ~~b. A manure management plan as provided in section 459.312~~
15 11 ~~and manure management plan filing fee as provided in section~~
15 12 ~~459.400.~~

15 13 ~~c. A construction permit application fee as provided in~~
15 14 ~~section 459.400.~~

15 15 Sec. 16. Section 459.303, Code 2007, is amended by adding
15 16 the following new subsection:

15 17 NEW SUBSECTION. 3A. The department shall accept the
15 18 construction of the confinement feeding operation structure if
15 19 the construction complies with the community-based odor
15 20 assessment plan, unless the department determines that there
15 21 is a preponderance of the evidence that the construction would
15 22 be detrimental to persons at the benefited object or location.
15 23 The department may reject the community-based odor assessment
15 24 plan or accept a revised community-based odor assessment plan.

15 25 Sec. 17. Section 459.303, subsection 5, paragraph a,
15 26 subparagraphs (1) and (2), Code 2007, are amended to read as
15 27 follows:

15 28 (1) Three thousand animal units for animals other than
15 29 swine maintained as part of a swine ~~farrowing and gestating~~
15 30 ~~gestating-to=farrowing~~ operation or ~~swine~~ farrow-to=finish
15 31 operation or cattle maintained as part of a cattle operation.

15 32 (2) One thousand two hundred fifty animal units for swine
15 33 maintained as part of a swine ~~farrowing and gestating~~
15 34 ~~gestating-to=farrowing~~ operation.

15 35 Sec. 18. Section 459.304, subsection 1, Code 2007, is
16 1 amended to read as follows:

16 2 A county board of supervisors shall review an application
16 3 to construct, including expand, a confinement feeding
16 4 operation structure proposed to be located in the county and
16 5 requiring a permit issued by the department pursuant to
16 6 section 459.303 as follows:

16 7 1. a. The department shall deliver a copy or require the
16 8 applicant to deliver a copy of the application ~~for a permit to~~
16 9 ~~construct, including expanding, a confinement feeding~~
16 10 ~~operation structure pursuant to section 459.303, including~~
16 11 supporting documents, to the county board of supervisors ~~in~~

~~16 12 the county where the confinement feeding operation structure~~
~~16 13 subject to the permit is proposed to be constructed.~~

16 14 b. The county auditor or ~~other~~ another county officer
16 15 designated by the county board of supervisors may accept the
16 16 application on behalf of the board. If the department
16 17 requires the applicant to deliver a copy of the application to
16 18 the county board of supervisors, the board shall notify the
16 19 department that the board has received the application
16 20 according to procedures required by the department.

~~16 21 c. A county board of supervisors may assess an applicant a~~
~~16 22 construction permit application fee of not more than one~~
~~16 23 hundred dollars which shall be deposited in the general fund~~
~~16 24 of the county.~~

16 25 Sec. 19. Section 459.304, subsection 2, unnumbered
16 26 paragraph 1, Code 2007, is amended to read as follows:

~~16 27 Regardless of whether the county board of supervisors has~~
~~16 28 adopted a construction evaluation resolution, the county may~~
16 29 The county board of supervisors shall provide county comment
16 30 to the department on a construction permit for the approval or
~~16 31 disapproval of an application for a confinement feeding~~
~~16 32 operation structure.~~

16 33 Sec. 20. Section 459.304, subsection 2, paragraph b,
16 34 unnumbered paragraph 1, Code 2007, is amended to read as
16 35 follows:

17 1 The board ~~may hold~~ shall prepare its county comment by
17 2 holding a public hearing to receive public comments of the
17 3 public regarding the application. The ~~county board of~~
17 4 ~~supervisors~~ may submit its own comments by the board regarding
17 5 the application and shall submit comments of the public to the
17 6 department as provided in this section, including but not
17 7 limited to all of the following:

17 8 Sec. 21. Section 459.304, subsection 2, paragraph b,
17 9 subparagraph (1), Code 2007, is amended to read as follows:

17 10 (1) The existence of an object or location not included in
17 11 the application that benefits from a separation distance
17 12 requirement as provided in section 459.202, 459.202A, ~~or~~
17 13 459.204, or 459.310.

17 14 Sec. 22. Section 459.304, subsections 3 through 8, Code
17 15 2007, are amended to read as follows:

~~17 16 3. A county board of supervisors may adopt a construction~~
~~17 17 evaluation resolution relating to the construction of a~~
~~17 18 confinement feeding operation structure. The board must~~
~~17 19 submit such resolution to the department for filing. If the~~
~~17 20 board has submitted such resolution to the department, the~~
~~17 21 board may shall~~ evaluate the construction permit an
17 22 application and submit an adopted a timely recommendation to
17 23 the department to approve or disapprove a construction permit
17 24 the application as provided in this subsection. The board
17 25 must make its decision to recommend approval or disapproval of
17 26 the permit application as provided in this subsection.

17 27 a. For the expansion of a confinement feeding operation
17 28 that includes a confinement feeding operation structure
17 29 constructed prior to April 1, 2002, the board shall not
17 30 evaluate a construction permit the application for the
17 31 construction or expansion of a confinement feeding operation
17 32 structure if after the expansion of the confinement feeding
17 33 operation, its animal unit capacity is one thousand six
17 34 hundred sixty-six animal units or less.

17 35 b. The board ~~must shall~~ conduct an evaluation of the
18 1 application using the master matrix as provided in section
18 2 459.305. The board's recommendation may be based on the
18 3 results produced by using the master matrix ~~or and~~ may be
18 4 based on comments under county comment as provided in this
18 5 section regardless of the results of the master matrix.

18 6 c. In completing the master matrix, the board shall not
18 7 score criteria on a selective basis. The board ~~must shall~~
18 8 score all criteria which is part of the master matrix
18 9 according to the terms and conditions relating to construction
18 10 as specified in the application or commitments for manure
18 11 management that are to be incorporated into a manure
18 12 management plan as provided in section 459.312.

18 13 d. The board's ~~adopted~~ recommendation to the department
18 14 shall include the specific reasons and any supporting
18 15 documentation for the decision to recommend approval or
18 16 disapproval of the application.

18 17 4. The department must receive the county board of
18 18 ~~supervisor's comments or supervisors' recommendation,~~
~~18 19 including county comment and the county board of supervisors'~~
18 20 evaluation for approval or disapproval of an application for a
~~18 21 construction permit not later than thirty sixty~~ days following
18 22 the applicant's delivery of the application to the department.

18 23 Regardless of whether the department receives ~~comments or an~~
18 24 ~~evaluation a timely submitted recommendation~~ by a county board
18 25 of supervisors, the department must approve or disapprove ~~an~~
18 26 ~~the application for a construction permit~~ within sixty ninety
18 27 days following the applicant's delivery of the application to
18 28 the department. However, the applicant may deliver a notice
18 29 requesting a continuance. Upon receipt of a notice, the time
18 30 required for the county or department to act upon the
18 31 application shall be suspended for the period provided in the
18 32 notice, but for not more than thirty days after the
18 33 department's receipt of the notice. The applicant may submit
18 34 more than one notice. However, the department may provide
18 35 that an application is terminated if no action is required by
19 1 the department for one year following delivery of the
19 2 application to the board. The department may also provide for
19 3 a continuance when it considers the application. The
19 4 department shall provide notice to the applicant and the board
19 5 of the continuance. The time required for the department to
19 6 act upon the application shall be suspended for the period
19 7 provided in the notice, but for not more than thirty days.
19 8 However, the department shall not provide for more than one
19 9 continuance.

19 10 5. a. The department shall approve an application for ~~a~~
19 11 ~~construction permit~~ if the county board of supervisors ~~which~~
19 12 ~~has filed a county construction evaluation resolution timely~~
19 13 ~~submits an adopted a~~ recommendation to approve the
19 14 ~~construction permit~~ application which ~~may shall at least be~~
19 15 based on a satisfactory rating produced by the master matrix
19 16 to the department and the department determines that the
19 17 application meets the requirements of this chapter ~~without~~
19 18 ~~conducting an independent evaluation of the application using~~
19 19 ~~the master matrix~~. The department shall disapprove an
19 20 application that does not ~~satisfy the meet those~~ requirements
19 21 ~~of this chapter~~ regardless of the ~~adopted~~ recommendation of
19 22 the board. The department shall consider ~~any timely filed~~
19 23 ~~comments made county comment timely submitted~~ by the board as
19 24 provided in this section to determine if an application meets
19 25 ~~the those~~ requirements of this chapter.

19 26 b. If the board submits to the department ~~an adopted a~~
19 27 recommendation to disapprove an application for ~~a construction~~
19 28 ~~permit~~ that is based on ~~a an unsatisfactory~~ rating produced by
19 29 ~~using~~ the master matrix, the department shall first determine
19 30 if the application meets the requirements of this chapter ~~as~~
19 31 ~~provided in section 459.103 without conducting an independent~~
19 32 ~~evaluation of the application using the master matrix~~. The
19 33 department shall disapprove an application that does not
19 34 ~~satisfy the meet those~~ requirements of this chapter regardless
19 35 of any result produced by using the master matrix. If the
20 1 application meets ~~the those~~ requirements of this chapter, the
20 2 department shall conduct an independent evaluation of the
20 3 application ~~by~~ using the master matrix. The department shall
20 4 approve the application if it ~~achieves produces~~ a satisfactory
20 5 rating according to the department's ~~independent~~ evaluation.
20 6 The department shall disapprove the application if it produces
20 7 an unsatisfactory rating regardless of whether the application
20 8 ~~otherwise~~ satisfies the requirements of this chapter. The
20 9 department shall consider ~~any timely filed comments made~~
20 10 ~~county comment timely submitted~~ by the board as provided in
20 11 this section to determine if an application meets ~~the those~~
20 12 requirements of this chapter.

20 13 c. If the county board of supervisors does not ~~timely~~
20 14 submit a ~~construction evaluation resolution to the department,~~
20 15 ~~fails to submit an adopted~~ recommendation, ~~submits only~~
20 16 ~~comments, or fails to submit comments to approve or disapprove~~
20 17 ~~an application based on a rating produced by using the master~~
20 18 ~~matrix, the department shall approve the application if the~~
20 19 ~~application meets the requirements of this chapter as provided~~
20 20 ~~in section 459.103 board shall be deemed to have submitted to~~
20 21 ~~the department a recommendation to disapprove an application~~
20 22 ~~that is based on an unsatisfactory rating produced by using~~
20 23 ~~the master matrix as provided in this section~~.

20 24 6. The department may conduct an inspection of the site on
20 25 which the construction is proposed after providing at a
20 26 minimum twenty-four hours' notice or upon receiving consent
20 27 from the construction permit applicant. The county board of
20 28 supervisors ~~that has adopted a construction evaluation~~
20 29 ~~resolution~~ may designate a county employee to accompany a
20 30 departmental official during the site inspection. The county
20 31 employee shall have the same right to access to the site's
20 32 real estate as the departmental official conducting the
20 33 inspection during the period that the county employee

20 34 accompanies the departmental official. The departmental
20 35 official and the county employee shall comply with standard
21 1 biosecurity requirements customarily required by the
21 2 confinement feeding operation that are necessary in order to
21 3 control the spread of disease among an animal population.

21 4 7. Upon written request by a county resident, the county
21 5 board of supervisors shall forward to the county resident a
21 6 copy of the county comment, the board's adopted
21 7 ~~recommendation, any county comments to the department on the~~
21 8 ~~permit application, and the department's responses, as~~
21 9 provided in chapter 22.

21 10 8. a. The department shall deliver a notice to the
21 11 applicant within three days of the department's decision to
21 12 approve or disapprove an application ~~for a construction~~
21 13 ~~permit. If the board of supervisors has submitted an adopted~~
21 14 ~~recommendation to the~~ The department for the approval or
21 15 ~~disapproval of a construction permit application as provided~~
21 16 ~~in this section, the department shall notify the county board~~
21 17 ~~of supervisors of the department's decision to approve or~~
21 18 ~~disapprove the application at the same time.~~

21 19 b. (1) The applicant may contest the department's
21 20 decision by requesting a hearing and may elect to have the
21 21 hearing conducted before an administrative law judge pursuant
21 22 to chapter 17A or before the commission. If the applicant and
21 23 a board of supervisors are both contesting the department's
21 24 decision, the applicant may request that the commission
21 25 conduct the hearing on a consolidated basis. The commission
21 26 shall hear the case according to procedures established by
21 27 rules adopted by the department. The commission may hear the
21 28 case as a contested case proceeding under chapter 17A. The
21 29 department, upon petition by the applicant, shall deliver to
21 30 the administrative law judge or the commission a copy of the
21 31 ~~board of supervisors' county comment, the board's~~
21 32 ~~recommendation together with the results produced by its using~~
21 33 ~~the master matrix and any supporting data or documents~~
21 34 ~~submitted with the results, comments submitted by the board to~~
21 35 ~~the department, and the department's independent evaluation of~~
22 1 the application including the results produced by its matrix
22 2 and any supporting data or documents. If the commission hears
22 3 the case, its decision shall be the department's final agency
22 4 action. The commission shall render a decision within
22 5 thirty-five days from the date that the applicant or board
22 6 files a demand for a hearing.

22 7 (2) ~~A county board of supervisors that has submitted an~~
22 8 ~~adopted recommendation to the department may contest the~~
22 9 ~~department's decision by requesting a hearing before the~~
22 10 ~~commission. The commission shall hear the case according to~~
22 11 ~~procedures established by rules adopted by the department.~~
22 12 ~~The commission may hear the case as a contested case~~
22 13 ~~proceeding under chapter 17A. A party in the case may elect~~
22 14 ~~to have the hearing conducted before an administrative law~~
22 15 ~~judge. The board may request that the department submit a~~
22 16 ~~copy of the department's independent evaluation of the~~
22 17 ~~application including the results produced by its matrix and~~
22 18 ~~any supporting data or documents. The decision by the~~
22 19 ~~commission shall be the department's final agency action. The~~
22 20 ~~commission shall render a decision within thirty-five days~~
22 21 ~~from the date that the board initiates the proceeding.~~

22 22 c. Judicial review of ~~the a decision of by~~ either the
22 23 department or the commission may be sought in accordance with
22 24 the terms of chapter 17A.

22 25 Sec. 23. Section 459.305, subsection 1, paragraph b, Code
22 26 2007, is amended to read as follows:

22 27 b. The master matrix shall be designed to produce
22 28 quantifiable results based on the scoring of all objective
22 29 criteria according to an established value scale. The
22 30 applicant shall provide an adequate response necessary to
22 31 score each criterion. Each criterion shall be assigned points
22 32 corresponding to the value scale. The master matrix shall
22 33 consider risks and factors mitigating risks if the confinement
22 34 feeding operation structure were constructed according to the
22 35 application.

23 1 Sec. 24. Section 459.305, subsection 2, unnumbered
23 2 paragraph 1, Code 2007, is amended to read as follows:

23 3 The master matrix shall include ~~criteria valuing~~
23 4 ~~environmental and community impacts for use by county boards~~
23 5 ~~of supervisors and the department three categories which~~
23 6 ~~measure impacts upon air quality, water quality, and~~
23 7 ~~communities.~~ The master matrix shall include definite point
23 8 selections for all criteria provided in the master matrix.
23 9 The master matrix shall provide ~~only~~ for scoring of positive

23 10 points and shall not provide for deduction of points, except
23 11 as provided in this section. If an applicant fails to provide
23 12 an adequate response necessary to score the criterion, the
23 13 point value for the criterion shall be deducted from the
23 14 relevant category score and overall score. The master matrix
23 15 shall provide for a minimum threshold score for each of the
23 16 categories and a minimum threshold overall score required to
23 17 receive a satisfactory rating. The master matrix shall be
23 18 structured to ensure that it feasibly ~~provides for~~ produces a
23 19 satisfactory rating. The master matrix shall include types of
23 20 criteria developed by Iowa state university which are part of
23 21 its community-based odor assessment plan as provided in
23 22 section 459.202A. Criteria valuing environmental impacts
23 23 shall account for animal agriculture's relationship to quality
23 24 of the environment and the conservation of natural resources,
23 25 and may include factors that refer to all of the following:

23 26 Sec. 25. Section 459.308, subsection 3, Code 2007, is
23 27 amended to read as follows:

23 28 3. a. A person shall not construct an unformed manure
23 29 storage structure on karst terrain or on an area that drains
23 30 into a known sinkhole. ~~However, a person may construct an~~
23 31 ~~unformed manure storage structure, if there is a~~
23 32 ~~twenty-five-foot vertical separation distance between the~~
23 33 ~~bottom of the unformed manure storage structure and underlying~~
23 34 ~~limestone, dolomite, or other soluble rock.~~

23 35 b. A person shall not construct an earthen manure storage
24 1 basin which is part of a swine confinement feeding operation.

24 2 Sec. 26. Section 459.310, subsection 1, paragraphs a, b,
24 3 and c, Code 2007, are amended to read as follows:

24 4 a. A confinement feeding operation structure shall not be
24 5 constructed closer to a designated groundwater access point
24 6 than the standard minimum separation distance requirement as
24 7 follows:

24 8 (1) five hundred feet away from the ~~For the~~ surface intake
24 9 inlet of an agricultural drainage well, one thousand three
24 10 hundred twenty feet.

24 11 (2) A confinement feeding operation structure shall not be
24 12 constructed closer than one thousand feet from ~~For~~ a wellhead,
24 13 cistern of an agricultural drainage well, or known sinkhole,
24 14 two thousand six hundred forty feet. However, the department
24 15 may adopt rules requiring an increased separation distance
24 16 under this paragraph in order to protect the integrity of a
24 17 water of the state. The increased separation distance shall
24 18 not be more than two thousand feet. If the department
24 19 exercises its discretion to increase the separation distance
24 20 requirement, the department shall not approve an application
24 21 for the construction of a confinement feeding operation
24 22 structure within that separation distance as provided in
24 23 section 459.303.

24 24 (3) For a drinking water well, one thousand feet.
24 25 However, if the confinement feeding operation structure is a
24 26 confinement building or formed manure storage structure, such
24 27 confinement feeding operation structure shall not be
24 28 constructed closer than five hundred feet.

24 29 b. A confinement feeding operation structure shall not be
24 30 constructed ~~if the confinement feeding operation structure as~~
24 31 ~~constructed is~~ closer to a water source or designated wetland
24 32 than any of the following the standard minimum separation
24 33 distance requirement as follows:

24 34 (1) Five hundred feet away from ~~For~~ a water source other
24 35 than a major water source, one thousand three hundred twenty
25 1 feet.

25 2 (2) One thousand feet away from ~~For~~ a major water source
25 3 two thousand six hundred forty feet.

25 4 (3) Two thousand five hundred feet away from ~~For~~ a
25 5 designated wetland, two thousand six hundred forty feet.

25 6 c. (1) A water source, other than a major water source,
25 7 shall not be constructed, expanded, or diverted, if the water
25 8 source as constructed, expanded, or diverted is closer than
25 9 five one thousand three hundred twenty feet ~~away~~ from a
25 10 confinement feeding operation structure.

25 11 (2) A major water source shall not be constructed,
25 12 expanded, or diverted, if the major water source as
25 13 constructed, expanded, or diverted is closer than ~~one two~~
25 14 thousand six hundred forty feet from a confinement feeding
25 15 operation structure.

25 16 (3) A designated wetland shall not be established, if the
25 17 designated wetland is closer than two thousand ~~five six~~
25 18 hundred forty feet ~~away~~ from a confinement feeding operation
25 19 structure.

25 20 Sec. 27. Section 459.310, subsection 3, Code 2007, is

25 21 amended to read as follows:

25 22 3. A standard minimum separation distance required in
25 23 subsection 1 shall not apply to any of the following:

25 24 ~~a. A location or object and a farm pond or privately owned
25 25 lake, as defined in section 462A.2.~~

25 26 ~~b. a. A confinement feeding operation building, an egg
25 27 washwater storage structure, or a manure storage structure
25 28 constructed with a secondary containment barrier. The
25 29 department shall adopt rules providing for the construction
25 30 and use of a secondary containment barrier, including
25 31 construction design standards.~~

25 32 b. A confinement feeding operation subject to an
25 33 alternative minimum separation distance requirement, in lieu
25 34 of the standard minimum separation distance required in
25 35 subsection 1, determined as follows:

26 1 (1) The department shall adopt rules providing for an
26 2 increase in the standard minimum separation distance
26 3 requirement in order to protect the integrity of a water of
26 4 the state.

26 5 (2) The department may adopt rules to decrease the
26 6 standard minimum separation distance requirement if the
26 7 department determines that the alternative minimum separation
26 8 distance requirement protects the integrity of a water of the
26 9 state to the same extent as the standard minimum separation
26 10 distance requirement. The department may also act on a
26 11 case-by-case basis to grant a waiver to a person applying for
26 12 a decrease in the standard minimum separation distance
26 13 requirement based on the same determination.

26 14 Sec. 28. Section 459.310, subsection 4, unnumbered
26 15 paragraph 1, Code 2007, is amended to read as follows:

26 16 A standard minimum separation distance required in
26 17 subsection 1, ~~or~~ the prohibition against construction of a
26 18 confinement feeding operation structure on a one hundred year
26 19 floodplain as provided in subsection 2, and the alternative
26 20 minimum separation distance requirement provided in subsection

26 21 3, shall not apply to a confinement feeding operation that
26 22 includes a confinement feeding operation structure ~~that was
26 23 constructed prior to March 1, 2003,~~ if any of the following
26 24 apply:

26 25 Sec. 29. Section 459.311, subsection 2, Code 2007, is
26 26 amended to read as follows:

26 27 2. Manure from an animal feeding operation shall be
26 28 disposed of in a manner which will not cause surface water or
26 29 groundwater pollution. Disposal in accordance with the
26 30 provisions of state law, including this chapter, rules adopted
26 31 pursuant to the provisions of state law, including this
26 32 chapter, and guidelines adopted pursuant to this chapter, ~~and
26 33 section 459.314,~~ shall be deemed as compliance with this
26 34 requirement.

26 35 Sec. 30. Section 459.312, subsection 1, paragraphs a and
27 1 b, Code 2007, are amended to read as follows:

27 2 a. The owner of a confinement feeding operation, ~~other
27 3 than a small animal feeding operation,~~ if any of the following
27 4 ~~apply:~~ that maintains more than fifty animal units.

27 5 ~~(1) The confinement feeding operation was constructed
27 6 after May 31, 1985, regardless of whether the confinement
27 7 feeding operation structure was required to be constructed
27 8 pursuant to a construction permit.~~

27 9 ~~(2) The owner constructs a manure storage structure,
27 10 regardless of whether the person is required to be issued a
27 11 permit for the construction pursuant to section 459.303 or
27 12 whether the person has submitted a prior manure management
27 13 plan.~~

27 14 b. A person who applies manure from a confinement feeding
27 15 operation, ~~other than a small animal feeding operation,~~ which
27 16 is located in another state, if the manure is applied on land
27 17 located in this state.

27 18 Sec. 31. Section 459.312, subsection 10, unnumbered
27 19 paragraph 1, Code 2007, is amended to read as follows:

27 20 ~~¶~~ Except as otherwise provided in this section, a manure
27 21 management plan shall include all of the following standard
27 22 minimum requirements:

27 23 Sec. 32. Section 459.312, subsection 10, is amended by
27 24 adding the following new paragraph:

27 25 NEW PARAGRAPH. h. Best management practices for operating
27 26 the confinement feeding operation which are part of a
27 27 community-based odor assessment plan accepted by the
27 28 department when approving a permit to construct a confinement
27 29 feeding operation structure which is part of the confinement
27 30 feeding operation as provided in section 459.303.

27 31 Sec. 33. Section 459.312, Code 2007, is amended by adding

27 32 the following new subsection:

27 33 NEW SUBSECTION. 10A. The department may provide a
27 34 procedure for the approval and monitoring of alternative or
27 35 experimental practices, mechanisms, processes, or
28 1 infrastructure which meets the purposes of this section, which
28 2 may be incorporated as part of the manure management plan.
28 3 The department may approve a manure management plan that
28 4 includes an alternative minimum requirement in lieu of a
28 5 standard minimum requirement otherwise provided in this
28 6 section. The department may approve the alternative minimum
28 7 requirement on a trial or permanent basis.

28 8 Sec. 34. Section 459.313, Code 2007, is amended to read as
28 9 follows:

28 10 459.313 MANURE APPLICATION == RULES.

28 11 This section applies to the application of manure from an
28 12 animal feeding operation.

28 13 1. The department shall adopt rules governing all of the
28 14 following:

28 15 a. The application of manure in close proximity to any of
28 16 the following:

28 17 (1) A designated groundwater access point.

28 18 (2) A water source.

28 19 (3) A designated wetland.

28 20 b. The application of manure originating from an anaerobic
28 21 lagoon or aerobic structure which is part of a confinement
28 22 feeding operation. The rules shall establish application
28 23 rates and practices to minimize groundwater or surface water
28 24 pollution resulting from application, including pollution
28 25 caused by runoff or other manure flow resulting from
28 26 precipitation events. The rules shall establish different
28 27 application rates and practices based on the water holding
28 28 capacity of the soil at the time of application.

28 29 2. A person shall not only apply manure by spray
28 30 irrigation equipment, except as follows:

28 31 a. A person shall not apply manure by using spray

28 32 irrigation equipment if the manure originates from a swine
28 33 confinement feeding operation.

28 34 b. A person may apply manure by spray irrigation equipment
28 35 if the manure is from an animal feeding operation other than a

29 1 swine confinement feeding operation and the person applies the
29 2 liquid manure as provided by rules adopted by the department

29 3 pursuant to chapter 17A. However, a person shall not use
29 4 restricted spray irrigation equipment to apply manure
29 5 originating from a confinement feeding operation, unless the
29 6 manure has been diluted as provided by rules adopted by the
29 7 department, including diluted by use of an anaerobic lagoon.

29 8 3. a. Except as provided in paragraph "b", a person shall
29 9 not apply manure if the manure is applied closer than a

29 10 standard minimum separation distance requirement as follows:

29 11 (1) For a designated groundwater access point, two hundred
29 12 feet.

29 13 (2) For a water source other than a high-quality water
29 14 resource, two hundred feet.

29 15 (3) For a high-quality water resource, four hundred feet.

29 16 b. The department provides for an alternative minimum
29 17 separation distance requirement in lieu of the standard

29 18 minimum separation distance requirement in paragraph "a" for a
29 19 high-quality water resource. The alternative minimum

29 20 separation distance requirement shall increase the standard

29 21 minimum separation distance requirement as necessary to

29 22 protect the integrity of the high-quality water resource as

29 23 provided by rules adopted by the department.

29 24 Sec. 35. DEPARTMENT OF NATURAL RESOURCE STUDY ==

29 25 REEVALUATION OF MASTER MATRIX. The department of natural
29 26 resources shall conduct a reevaluation of the master matrix
29 27 used to evaluate confinement feeding operations as provided in
29 28 section 459.305.

29 29 1. The department shall consider if the master matrix
29 30 provides a comprehensive assessment mechanism in order to
29 31 produce a statistically verifiable basis for determining
29 32 whether to approve or disapprove an application for the
29 33 construction, including expansion, of a confinement feeding
29 34 operation structure requiring a permit pursuant to section
29 35 459.303.

30 1 2. The department shall consider the categories and
30 2 criteria listed as part of each of the categories, the point
30 3 totals in each category required to achieve a satisfactory
30 4 rating, and the deduction of points.

30 5 3. The department shall prepare and submit a report to the
30 6 governor and general assembly not later than January 11, 2008.

30 7 The report shall contain findings and recommendations.

30 8 Sec. 36. Section 459.203, Code 2007, is repealed.
30 9 Sec. 37. Section 459.314, Code 2007, is repealed.
30 10 Sec. 38. IMPLEMENTATION OF ACT. Section 25B.2, subsection
30 11 3, shall not apply to this Act.
30 12 Sec. 39. EFFECTIVE DATE. The section of this Act
30 13 requiring the department of natural resources to conduct a
30 14 reevaluation of the master matrix used to evaluate confinement
30 15 feeding operations, being deemed of immediate importance,
30 16 takes effect upon enactment.

30 17 DIVISION II

30 18 TAXATION INVOLVING ANIMAL FEEDING OPERATIONS

30 19 Sec. 40. Section 427.1, subsection 19, Code 2007, is
30 20 amended to read as follows:

30 21 19. POLLUTION CONTROL AND RECYCLING. Pollution=control or
30 22 recycling property as defined in this subsection shall be
30 23 exempt from taxation to the extent provided in this
30 24 subsection, upon compliance with the provisions of this
30 25 subsection.

30 26 a. This exemption shall apply to new installations of
30 27 pollution=control or recycling property beginning on January 1
30 28 after the construction or installation of the property is
30 29 completed. This exemption shall apply beginning on January 1,
30 30 1975, to existing pollution=control property if its
30 31 construction or installation was completed after September 23,
30 32 1970, and this exemption shall apply beginning January 1,
30 33 1994, to recycling property.

30 34 b. This exemption shall be limited to the market value, as
30 35 defined in section 441.21, of the pollution=control or
31 1 recycling property. If the pollution=control or recycling
31 2 property is assessed with other property as a unit, this
31 3 exemption shall be limited to the net market value added by
31 4 the pollution=control or recycling property, determined as of
31 5 the assessment date.

31 6 c. Application for this exemption shall be filed with the
31 7 assessing authority not later than the first of February of
31 8 the first year for which the exemption is requested, on forms
31 9 provided by the department of revenue.

31 10 (1) The application shall describe and locate the specific
31 11 pollution=control or recycling property to be exempted.

31 12 (2) The application for a specific pollution=control or
31 13 recycling property shall be accompanied by a certificate of
31 14 the department of natural resources certifying that the
31 15 primary use of the pollution=control property is to control or
31 16 abate pollution of any air or water of this state or to
31 17 enhance the quality of any air or water of this state or, if
31 18 the property is recycling property, that the primary use of
31 19 the property is for recycling.

31 20 d. A taxpayer may seek judicial review of a determination
31 21 of the department or, on appeal, of the environmental
31 22 protection commission in accordance with the provisions of
31 23 chapter 17A.

31 24 e. The environmental protection commission of the
31 25 department of natural resources shall adopt rules relating to
31 26 certification under this subsection and information to be
31 27 submitted for evaluating pollution=control or recycling
31 28 property for which a certificate is requested. The department
31 29 of revenue shall adopt any rules necessary to implement this
31 30 subsection, including rules on identification and valuation of
31 31 pollution=control or recycling property. All rules adopted
31 32 shall be subject to the provisions of chapter 17A.

31 33 f. For the purposes of this subsection, "~~pollution=control~~
31 34 all of the following apply:

31 35 (1) (a) "~~Pollution=control~~ property" means personal
32 1 property or improvements to real property, or any portion
32 2 thereof, used primarily to control or abate pollution of any
32 3 air or water of this state or used primarily to enhance the
32 4 quality of any air or water of this state and "recycling
32 5 property" means personal property or improvements to real
32 6 property or any portion of the property, used primarily in the
32 7 manufacturing process and resulting directly in the conversion
32 8 of waste glass, waste plastic, wastepaper products, waste
32 9 paperboard, or waste wood products into new raw materials or
32 10 products composed primarily of recycled material. In the
32 11 event such property shall also serve other purposes or uses of
32 12 productive benefit to the owner of the property, only such
32 13 portion of the assessed valuation thereof as may reasonably be
32 14 calculated to be necessary for and devoted to the control or
32 15 abatement of pollution, to the enhancement of the quality of
32 16 the air or water of this state, or for recycling shall be
32 17 exempt from taxation under this subsection.

32 18 (b) "~~Pollution=control~~ property" or "~~recycling~~ property"

32 19 does not include property used for purposes related to the
32 20 care and feeding of livestock as defined in section 169C.1,
32 21 except for property which is eligible for a family farm tax
32 22 credit as provided in chapter 425A. The exemption calculated
32 23 for pollution-control property or recycling property used for
32 24 the purpose of care and feeding of livestock and which is
32 25 eligible for a family farm tax credit is limited to the first
32 26 one hundred thousand dollars of the property's assessed value.

32 27 (2) For the purposes of this subsection, "pollution"
32 28 "Pollution" means air pollution as defined in section 455B.131
32 29 or water pollution as defined in section 455B.171.

32 30 (3) "Water of the state" means the water of the state as
32 31 defined in section 455B.171.

32 32 (4) "Enhance the quality" means to diminish the level of
32 33 pollutants below the air or water quality standards
32 34 established by the environmental protection commission of the
32 35 department of natural resources.

33 1 Sec. 41. APPLICABILITY. This division of this Act is
33 2 applicable for tax years beginning on and after January 1,
33 3 2008.

33 4 EXPLANATION

33 5 DIVISION I == REGULATION OF ANIMAL FEEDING OPERATIONS.
33 6 This bill amends provisions in Code chapter 459 regulating
33 7 animal feeding operations (a place where livestock are
33 8 confined and fed and maintained for 45 days or more in any
33 9 12-month period), and specifically confinement feeding
33 10 operations and their associated structures (confinement
33 11 buildings, manure storage structures, and egg washwater
33 12 storage structures). A manure storage structure includes both
33 13 a formed structure made of concrete or steel. An unformed
33 14 manure storage structure is an impoundment used to store
33 15 manure including an anaerobic lagoon, aerobic structure, or
33 16 earthen manure storage basin (where wastes are removed at
33 17 least one each year). The Code chapter also regulates the
33 18 application of manure originating from an animal feeding
33 19 operation.

33 20 AIR QUALITY == SITING. Code section 459.202 provides
33 21 various separation distance requirements between confinement
33 22 feeding operation structures and homes, schools, businesses,
33 23 churches, public use areas (portions of parks and cemeteries).
33 24 The Code section also provides various separation distance
33 25 requirements between those structures and homes, schools,
33 26 businesses, and churches located within the corporate limits
33 27 of a city. According to Code section 459.202, the amount of
33 28 the separation distance required depends upon: (1) when the
33 29 confinement feeding operation structure was constructed or
33 30 expanded which is related to the date when a new separation
33 31 distance became effective, and (2) the size of the confinement
33 32 feeding operation which increases the distance according to
33 33 the capacity of the confinement feeding operation (either by
33 34 animal weight capacity or animal unit capacity).

33 35 Code section 459.203 provides that a confinement feeding
34 1 operation constructed or expanded prior to the date that a
34 2 distance requirement became effective may continue to operate
34 3 regardless of the new distance requirement, and under certain
34 4 circumstances may be expanded. For example, a confinement
34 5 feeding operation may expand if it continues to meet the
34 6 separation distance requirements applicable when the
34 7 confinement feeding operation was established or it meets
34 8 minimum capacity threshold requirements after expansion. It
34 9 may expand so long as the confinement feeding operation stays
34 10 within a minimum capacity (e.g., double its capacity on the
34 11 date that a new separation requirement was established).
34 12 Finally, it authorizes expansion by replacing an unformed
34 13 (earthen) manure storage structure with a formed (concrete)
34 14 manure storage structure.

34 15 AIR QUALITY SITING == INCREASED SEPARATION DISTANCES. The
34 16 bill amends Code section 459.202 to provide increased
34 17 separation distance requirements for confinement feeding
34 18 operation structures constructed on or after the effective
34 19 date of the bill, or expanded on or after the effective date
34 20 of the bill regardless of the date of construction. It adds a
34 21 number of new types of places benefiting from the separation
34 22 distance requirements, including a city, a structure
34 23 associated with a gestating-to-farrowing operation, a lot of a
34 24 planned residential housing development which has been
34 25 platted, and a tourism destination as provided by the
34 26 department of economic development in cooperation with the
34 27 department of natural resources. It provides a special
34 28 separation distance requirement for a confinement feeding
34 29 operation structure and a tourism destination regardless of

34 30 the size of the confinement feeding operation. The separation
34 31 distance requirement is increased if the tourism destination
34 32 is a high-quality water resource. All places which benefit
34 33 from a separation distance are referred to collectively as a
34 34 "benefited object or location". The bill eliminates special
34 35 provisions that allow a confinement feeding operation
35 1 established prior to a given effective date of a separation
35 2 distance to expand, with one exception. A confinement feeding
35 3 operation may expand by replacing an unformed manure storage
35 4 structure with a formed manure structure regardless of the
35 5 date that the confinement feeding operation was constructed.

35 6 Code section 459.205 provides a number of exceptions to the
35 7 separation distance requirements including when: (1) the
35 8 confinement feeding operation qualifies as a small animal
35 9 feeding operation (having an animal unit capacity of 500 or
35 10 fewer animal units), (2) the neighboring titleholder
35 11 benefiting from separation distance executes a written waiver
35 12 with the titleholder of the land where the confinement feeding
35 13 operation structure is located, or (3) the object or location
35 14 benefiting from the separation distance requirement encroaches
35 15 within the separation distance. The bill eliminates the
35 16 exception for confinement feeding operations associated with
35 17 small animal feeding operations, and makes the existing
35 18 exceptions applicable to the new types of benefited objects or
35 19 locations.

35 20 The bill provides for a community-based odor assessment
35 21 plan (an odor disbursement model) for swine confinement
35 22 feeding operations as administered by Iowa state university.
35 23 The purpose of the plan is to determine: (1) the best site
35 24 for constructing, including expanding, a confinement feeding
35 25 operation structure, and (2) the best management practices for
35 26 operating a confinement feeding operation. A confinement
35 27 feeding operation may be constructed closer than otherwise
35 28 required to a benefited object or location according to the
35 29 terms of the plan if the department accepts the plan as part
35 30 of an application for a construction permit.

35 31 AIR QUALITY == MANURE APPLICATION. Code section 459.204
35 32 provides that a person cannot apply liquid manure originating
35 33 from a confinement feeding operation on land located within
35 34 750 feet from a benefited object or location. Code section
35 35 459.205 provides exceptions from the separation distance
36 1 requirements if: (1) the liquid manure is injected into the
36 2 soil or incorporated within the soil not later than 24 hours
36 3 from the original application, (2) the titleholder of the land
36 4 benefiting from the separation distance executes a written
36 5 waiver, (3) the liquid manure originates from a small animal
36 6 feeding operation, or (4) the liquid manure is applied by
36 7 spray irrigation equipment.

36 8 The bill provides that a person cannot apply dry manure
36 9 closer than 400 feet from the object or location. The bill
36 10 provides that liquid manure must be incorporated within or
36 11 injected into the soil within the same day. It retains the
36 12 exceptions in cases of waiver, and eliminates an exception for
36 13 small animal feeding operations and spray irrigation.

36 14 WATER QUALITY == SITING. Code section 459.310 provides
36 15 that a confinement feeding operation structure cannot be
36 16 constructed closer than a specific distance from the opening
36 17 to groundwater (i.e., the surface inlet of an agricultural
36 18 drainage well or a wellhead, cistern of an agricultural
36 19 drainage well, or known sinkhole) and also from areas where
36 20 surface water is present; a water source such as a lake,
36 21 river, reservoir, creek, or stream; a major water source
36 22 capable of supporting a floating vessel during a total of a
36 23 six-month period in 10 years; or a wetland designated by the
36 24 federal or state government. The Code section provides that
36 25 the same distance requirements that apply to the construction
36 26 of a confinement feeding operation in proximity to an area
36 27 where surface water is present also apply to the establishment
36 28 of an area of surface water in proximity to an existing
36 29 confinement feeding operation structure.

36 30 WATER QUALITY SITING == INCREASED SEPARATION DISTANCES FOR
36 31 SUBSURFACE WATER. The division increases the separation
36 32 distances applicable to openings to groundwater (referred to
36 33 as a designated groundwater access point) including a surface
36 34 inlet of an agricultural drainage well, wellhead, cistern of
36 35 an agricultural drainage well, or known sinkhole. The bill
37 1 also prohibits the construction of a confinement feeding
37 2 operation structure within proximity from a drinking water
37 3 well, unless the confinement feeding operation is a
37 4 confinement building or formed manure storage structure. In
37 5 that case, the minimum separation distance is less.

37 6 WATER QUALITY SITING == INCREASED SEPARATION DISTANCES FOR
37 7 SURFACE WATER. The bill increases the separation distances
37 8 applicable to areas where surface water is present including a
37 9 water source other than a major water source, a major water
37 10 source, and a designated wetland. These increased separation
37 11 distances apply to both construction of confinement feeding
37 12 operation structures and the establishment or diversion of
37 13 water sources or designated wetlands.

37 14 WATER QUALITY == CONSTRUCTION OR EXPANSION OF EARTHEN
37 15 MANURE STORAGE BASINS PROHIBITED. The bill prohibits a person
37 16 from constructing or expanding an earthen manure storage
37 17 structure (an impoundment in which manure is accumulated
37 18 without removal for at least once each year) which is part of
37 19 a swine confinement feeding operation.

37 20 WATER QUALITY == APPLICATION == SPRAY IRRIGATION EQUIPMENT.
37 21 The bill prohibits the use of spray irrigation equipment to
37 22 apply manure if the manure originates from a swine confinement
37 23 feeding operation.

37 24 APPROVAL OF CONSTRUCTION PERMITS == MATRIX. Code sections
37 25 459.304 and 459.305 provide for county participation in the
37 26 approval of permits for the construction of confinement
37 27 feeding operation structures by the department of natural
37 28 resources. Currently, counties are prohibited from adopting
37 29 or enforcing county legislation regulating a condition or
37 30 activity occurring on land used for the production, care,
37 31 feeding, or housing of animals unless the regulation is
37 32 expressly authorized by state law (Code section 331.304A).

37 33 One exception allows a county to provide comments to the
37 34 department regarding the issuance of a permit for construction
37 35 of confinement feeding operation structures. A second
38 1 exception allows a county to participate in the scoring of a
38 2 master matrix. The purpose of the master matrix is to provide
38 3 a comprehensive assessment mechanism in order to produce a
38 4 statistically verifiable basis for determining whether to
38 5 approve or disapprove an application for a construction
38 6 permit. A county board of supervisors may adopt a
38 7 construction evaluation resolution in order to use a master
38 8 matrix. If the board submits a resolution to the department,
38 9 the board may evaluate a construction permit application and
38 10 submit a recommendation to the department to approve or
38 11 disapprove the application. The department must approve an
38 12 application if the board submits a recommendation to approve
38 13 the application, and the department determines that the
38 14 application meets the requirements of Code chapter 459. The
38 15 department must disapprove an application that the department
38 16 determines does not satisfy the requirements of Code chapter
38 17 459 regardless of the recommendation from the board. If the
38 18 board submits a recommendation to disapprove the application,
38 19 the department must first determine if the application meets
38 20 the requirements of Code chapter 459. If the application
38 21 meets the requirements of the chapter, the department must
38 22 conduct an independent evaluation of the application using the
38 23 master matrix. The department must approve the application if
38 24 it achieves a satisfactory rating according to the
38 25 department's evaluation. The department must disapprove the
38 26 application if it produces an unsatisfactory rating regardless
38 27 of whether the application satisfies the requirements of Code
38 28 chapter 459. Both the applicant and the board may contest the
38 29 department's decision to the environmental protection
38 30 commission. The applicant may also contest the decision as a
38 31 contested case proceeding before an administrative law judge.

38 32 PARTICIPATION REQUIRED. The bill amends Code section
38 33 331.304A to specifically require that a county must
38 34 participate in reviewing an application to construct a
38 35 confinement feeding operation structure to be located in the
39 1 county. The county is allowed to assess a fee of \$100 for
39 2 processing the application. The bill amends Code sections
39 3 459.303 relating to the issuance of permits and 459.304
39 4 providing for county participation, by providing that the
39 5 department shall only issue a permit to construct a
39 6 confinement feeding operation structure after the review of an
39 7 application by the board of supervisors in the county where
39 8 the proposed construction is to be located. The review must
39 9 consist of providing for a public hearing and collecting
39 10 comments and engaging in an analysis of the application using
39 11 the master matrix.

39 12 The bill eliminates references to the construction
39 13 evaluation resolution. The bill requires that the department
39 14 must receive the board's comments or recommendation to approve
39 15 or disapprove the application within 60, instead of 30, days
39 16 following the applicant's delivery of the application to the

39 17 department, and must issue or not issue the permit within 90,
39 18 instead of 60, days following the applicant's delivery of the
39 19 application to the department. The bill retains the process
39 20 for departmental review of the application except that the
39 21 department must conduct an independent evaluation of
39 22 applications using the master matrix if a county board of
39 23 supervisors does not submit its evaluation.

39 24 The bill also requires the department to conduct a
39 25 reevaluation of the master matrix and report to the general
39 26 assembly the results of its reevaluation in 2008.

39 27 STATE MANDATE. The bill may include a state mandate as
39 28 defined in Code section 25B.3. The bill makes inapplicable
39 29 Code section 25B.2, subsection 3, which would relieve a
39 30 political subdivision from complying with a state mandate if
39 31 funding for the cost of the state mandate is not provided or
39 32 specified. Therefore, political subdivisions are required to
39 33 comply with any state mandate included in the bill.

39 34 EFFECTIVE DATE. This part of the bill takes effect on July
39 35 1, 2007, except for the study involving the master matrix
40 1 which takes effect upon enactment.

40 2 APPLICABLE PENALTIES. According to Code section 459.602, a
40 3 person who violates provisions relating to air quality are
40 4 subject to a civil penalty as provided in Code section
40 5 455B.109 which authorizes the environmental protection
40 6 commission to establish penalty amounts according to a
40 7 schedule not to exceed \$10,000. According to Code section
40 8 459.603, a person who violates a provision relating to water
40 9 quality is subject to penalties as provided in Code section
40 10 455B.191 which includes a judicially assessed civil penalty of
40 11 up to \$5,000.

40 12 DIVISION II == TAXATION INVOLVING ANIMAL FEEDING
40 13 OPERATIONS. The bill amends Code section 427.1, which
40 14 provides a number of exemptions from property taxation. The
40 15 section includes an exemption for certain types of
40 16 pollution-control and recycling property as certified by the
40 17 department of natural resources. The bill limits this tax
40 18 exemption for such property that is related to the care and
40 19 feeding of livestock by requiring that the property used for
40 20 the care and feeding of livestock must be eligible for a
40 21 family farm tax credit under Code chapter 425A. The bill also
40 22 provides that the tax credit still available is limited to the
40 23 first \$100,000 of the property's assessed value.

40 24 This part of the bill is applicable for tax years beginning
40 25 on and after January 1, 2008.

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